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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States parties due in 1998

Addendum

Libyan Arab Jamahiriya*

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* The initial report submitted by the Government of the Libyan Arab Jamahiriya is contained in documents CAT/C/9/Add.7 and 12/Rev.1; for its consideration by the Committee, see documents CAT/C/SR.93, 130, 135 and 135/Add.2 and Official Records of the General Assembly, forty-seventh and forty-eighth sessions, Supplement No. 44 (A/47/44, paras. 148-159 and A/48/44, paras. 181-207). For the second periodic report, see CAT/C/25/Add.3; for its consideration, see CAT/C/SR.201, 202 and 202/Add.2 and Official Records of the General Assembly, fiftieth session, Supplement No. 44 (A/50/44, paras. 95-104).

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Introduction

1. The Great Socialist People's Libyan Arab Jamahiriya attaches particular importance to human rights and fundamental freedoms. It has enacted legislation to protect and ensure respect for rights and freedoms and to prevent them from being circumscribed or restricted. These legislative safeguards have been reinforced by judicial safeguards in the form of an independent judiciary that takes legal action against any infringement of rights and freedoms or any act that is physically or morally detrimental to human dignity, thereby consolidating freedom, ensuring legal redress for those who have been wronged, preventing injustice and oppression, and strengthening the foundations of justice and security.

2. Any violation of human rights or freedoms that occurs despite the legal, judicial and administrative safeguards established by Libyan legislation for their protection must be characterized as individual or administrative behaviour that is incompatible with the guiding principles and choices of society. Such behaviour is prosecuted forthwith in a manner designed to prevent its recurrence.

3. Perhaps the most important guarantee of human rights and fundamental freedoms was the establishment on 2 March 1977 of the people's authority, as a result of which authority, national wealth and military power was vested in the people, who are therefore unfettered in political and economic terms.

4. The people exercise their authority through the people's congresses, which are alone responsible for enacting the legislation that regulates daily life and for formulating the State's foreign and domestic policies and principles. It is also they who elect the General People's Committee (the cabinet), the individual people's committees (ministries) and the basic people's committees to implement these policies. The committees are furthermore answerable to the congresses for their performance.

5. This concern with human rights stems from the Jamahiriya's Arab and Islamic heritage. Human beings, in the eyes of Islam, are God's vicars on earth. Freedom is not something bestowed on the individual. Every human being is born free and lives as a free agent until he dies. The principles and precepts of Islam venerate the individual, defend his humanity, reinforce his dignity and protect his life like those of no other religion. Islam ministers to the welfare of the individual in all matters relating to religion, the soul, the mind, procreation and property, the five basic pillars on which all international instruments and treaties that seek to safeguard human rights and fundamental freedoms are based.

6. Not only are the provisions of these international instruments and treaties reflected in Libyan law but they have also served as a major source of domestic legislation, for instance the Promotion of Freedom Act No. 20 of 1991. Moreover, the Jamahiriya subscribes to the principle of according primacy to the international treaties and instruments to which it is a party, so that their provisions take precedence over domestic legislation.

7. The Jamahiriya has acceded to 25 international treaties concerning human rights and fundamental freedoms in the belief that all human rights - be they

civil, political, economic, social or cultural - are interconnected and indivisible and include the right to development. The Jamahiriya is very much concerned to prevent the politicization of human rights and freedoms or their use as an instrument to exert pressure or as a pretext for interfering in the internal affairs of States. They must be approached instead in a spirit of dialogue and cooperation among States, which is based on neutrality and objectivity and takes into account States' distinctive cultural and religious characteristics, so that human rights continue to be a purely humanitarian matter.

I. INFORMATION OF A GENERAL NATURE

A. The legal framework of the Libyan Arab Jamahiriya

8. The political system in the Great Socialist People's Libyan Arab Jamahiriya is based on direct popular democracy in which the people themselves perform political, economic and social tasks, take decisions and enact legislation concerning various aspects of public and private life.

9. Direct popular democracy in the Jamahiri system is based on the twin pillars of people's congresses and people's committees. Sovereign decision-making authority is vested in the people's congresses, i.e. in the people who exercise it through the basic people's congresses. The people as a whole thus take the decisions they consider to be appropriate through the people's congresses.

10. The executive machinery consists of the people's committees which are directly elected by the people. They range from the people's committees at the basic congress level to the General People's Committee (the cabinet), which in turn implements the decisions taken by the people in the people's congresses and is accountable to them for its performance. The principle applied in the Jamahiri system, the system of people's authority, is that the people's congresses take the decisions and the people's committees implement them. The effective exercise of authority in a system based on the authority of the people means that the people control themselves. It also means that there is no intermediary between political reality, consisting in authority, and social reality, consisting in the people. It is the people alone who take decisions on foreign policy, planning, the economy, justice, public security, defence and other matters, and who enact legislation and elect a people's committee to implement the decisions taken in each field.

1. Legislative machinery

The mechanism for enactment of legislation

11. When the Jamahiriya feels that there is a need to regulate a particular field through legislation, it determines the broad outline of the legislation through its congresses. The outline is then referred to a specialized legal body at the Secretariat for Justice, which attends to the technical drafting of the bill and returns it to the basic people's congresses for adoption,

amendment or any other action they see fit. It is then submitted to the General People's Congress which, after considering all opinions concerning the text, promulgates the bills, which enters into force on the date of its publication in the Official Gazette.

12. Alternatively, the General People's Congress or one of the general people's committees may submit a bill relating to its area of jurisdiction to the people's congresses, which discuss the bill, make amendments if necessary, reject it or send it back, with comments, to the originating general people's committee so that it can be resubmitted to the people's congresses for adoption or amendment. The bill is then referred to the General People's Congress which, as the forum in which the congresses, people's committees, trade unions and professional associations meet, acts as a general drafting committee for bills and resolutions adopted by the congresses, whose comments are taken into account. Once this stage is completed, the bill is promulgated and enters into force on the date of its publication in the Official Gazette. The people's congresses are thus the sole legislative bodies in the Libyan Arab Jamahiriya.

2. Executive machinery

13. This comprises the people's committees which are elected by the people to administer the country's affairs in such areas as justice, defence, foreign affairs, petroleum, etc. They implement the decisions of the people's congresses in their area of jurisdiction and report directly to the people's congresses. There is no executive authority in the Jamahiriya that is not subject to the people's authority and closely supervised by the people, in accordance with the basic principle that the people's congresses take the decisions and the people's committees implement them.

3. Judicial authority

The courts and the Department of Public Prosecutions

14. There are four types of court: criminal courts, civil courts, administrative courts and personal status courts. Legal proceedings occur at three levels: first instance, appeal and review by the Supreme Court, which is the highest judicial authority in the judicial system and hears appeals brought before it in connection with criminal, civil, administrative and personal status judgements handed down by the highest courts in each category. Its judgements and rulings on matters of principle are binding on all other courts and on the administration in the Libyan Arab Jamahiriya.

The Attorney-General

15. In the Libyan legal system, the Attorney General is empowered to institute criminal proceedings either in person or through a member of the Department of Public Prosecutions (article 2 of the Code of Criminal Procedure). The Attorney-General is vested by law with sole competence to institute criminal proceedings, except in cases in which a criminal action can be brought only by the aggrieved party or by the Secretary for Justice (Minister of Justice).

The independence of the judiciary

16. The law accords absolute immunity to the members of the judiciary in accordance with the principle of the independence of the judiciary. Judges in the Jamahiriya are independent and subject to no authority other than that of the law (the Constitutional Declaration, the Organization of the Judiciary Act No. 55 of 1976, the Promotion of Freedom Act No. 20 of 1991 and the Great Green Document on Human Rights).

The procedure for selecting members of the judiciary

17. Judges are selected from among candidates holding university degrees in law, or in secular and Shari'a law. The decision of appointment is published by the Supreme Council of the Judiciary, which comprises the Secretary for Justice (Minister of Justice), the President of the Supreme Court, the Attorney-General, senior presidents of the appeal courts, heads of the directorates-general of judicial bodies and, in general, high-ranking members of the judiciary. The Supreme Council of the Judiciary bears sole responsibility for everything relating to the members of the judiciary, including appointment, promotion, assignment, secondment and disciplinary action for professional misconduct. The members of the judiciary differ in terms of their rank on appointment and promotion and receive far higher remuneration than civil servants in other branches of the administration by virtue of their independence and the nature of the profession that they exercise.

B. The general legal framework for the implementation of the provisions of the Convention

18. Every international treaty to which the Jamahiriya accedes following ratification by the basic people's congresses, the sole bodies with such jurisdiction in the country, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was ratified by the people's congresses and published in Official Gazette No. 90/20 of 9 October 1989, acquires binding force and takes legal precedence over the provisions of domestic legislation. In the event of conflict between the provisions of an international treaty to which Libya is a party and domestic legislation, the provisions of the international treaty prevail over those of domestic legislation. In accordance with this principle, the Convention against Torture, just like other international treaties to which the country has acceded, must be applied by the Libyan courts.

19. There is no inconsistency between the provisions of domestic legislation and those of the Convention. Even if an inconsistency between the two comes to light or if certain matters are not covered by domestic legislation, the provisions of the Convention prevail over the latter and must be applied in both cases. The Penal Code, the Code of Criminal Procedure, the Great Green Document on Human Rights and the Promotion of Freedom Act - to be considered in detail in Part Two of the report - are some of the domestic instruments that contain provisions consistent with those of the Convention.

20. Any interested party has the right to invoke the Convention and petition the Libyan judiciary to enforce the rights recognized therein. The Libyan courts are obliged to respond to such a petition and implement the provisions of the Convention promptly. We wish to reiterate, therefore, that there is no need in the Jamahiriya to incorporate the provisions of the Convention in domestic legislation or administrative regulations in order to ensure that they are enforced by the authorities, because international treaties to which the Libyan Arab Jamahiriya is a party are directly enforceable inasmuch as their provisions have primacy over those of domestic legislation.

Authorities with jurisdiction in matters covered by the Convention

21. The judiciary is responsible for applying the provisions of the Convention and those of domestic legal instruments in such a way as to prevent torture or to provide a legal remedy in the event of its occurrence. Individuals have the right to invoke the rights set forth in the Convention before the courts and to lodge a direct complaint if they are subjected to, or even threatened with, torture or degrading treatment. Article 1 of Act No. 5 of 1988 establishing the People's Court states that: "The purpose of the People's Court is to promote freedom, ensure legal redress for persons who have been wronged, prevent tyranny and oppression and strengthen the foundations of justice and security". Its purpose is thus consistent with the letter and spirit of the Convention.

22. In addition, members of the Department of Public Prosecutions, inspecting magistrates, and the presidents and vice-presidents of the courts of first instance and appeal courts supervise the public prisons to ensure that the Convention is respected and that no breaches of its provisions occur.

23. The following are a selection of cases that have come before the courts:

(i) Case No. 35 of 1995 (Al-Rajban) in which a police officer was charged with torture. The court sentenced him to three and a half years' imprisonment.

(ii) Case No. 275 of 1996 (Tubruk) in which a senior and junior police officer were charged with beating an accused person and abuse of official authority. Each of them was sentenced to one year's penal servitude.

(iii) Case No. 133 of 1995 (Tubruk) in which a senior police officer was charged with extending the period of detention of an accused person and a junior police officer was charged with torturing an accused person. The latter was sentenced to three years' penal servitude and the former was sentenced to six months' imprisonment and fined 50 dinars.

(iv) Case No. 76 of 1994 (Al-Qubbah) in which a junior police officer was charged with using violence against a number of persons. He was sentenced to a month's imprisonment and fined 100 dinars.

(v) Case No. 990 of 1996 (Darnah) in which an internal security officer was charged with forcibly detaining a person and using violence against him. The case is still before the courts.

(vi) Case No. 258 of 1997 (Al-Bayda) in which three junior police officers were charged with abuse of authority. They were acquitted.

(vii) Case No. 149 of 1997 (Shahhat) concerning three junior police officers who were acquitted.

24. Libyan legislation provides individuals who claim that they have been subjected to torture or other cruel, inhuman or degrading treatment or punishment with the means of obtaining legal redress through direct recourse either to the ordinary courts or to the People's Court, which immediately investigate the individuals' allegations of torture and other misconduct. Article 30 of the Promotion of Freedom Act stipulates that: "Everyone has the right to petition a court, in accordance with the law. The court shall provide him with all the necessary safeguards". Libyan legislation not only guarantees legal redress free of charge in the draft Constitution, the Promotion of Freedom Act and the Great Green Document on Human Rights but, more importantly, views free legal proceedings, in philosophical terms, as a free social service to which a litigant has access by virtue of the principle of free justice, a notion similar to that of free education, free medical care and free social security. But in this case, the notion has been developed still further inasmuch as litigants are protected against exploitation in the form of exorbitant lawyers' fees and honoraria. The corps of free lawyers was established as an administrative department by Act No. 4 of 1981. Its members are highly qualified lawyers whose expertise, experience and resources are no different from those of lawyers pursuing a career in what is known as a liberal profession. The members of the Department of People's Lawyers represent, defend and protect the rights of accused persons free of charge. Thus, the State pays lawyers' fees, court costs and related expenses. Under this system, the accused person is free to choose between the corps of free lawyers and the corps of private lawyers in accordance with the provisions of the Act. It constitutes a further step towards the strengthening of human rights and the prevention of torture and sets the Libyan legal system apart from all other legal systems in the world.

25. There are no difficulties affecting the degree of fulfilment of the obligations of the Libyan Arab Jamahiriya under the Convention against Torture.

II. LEGISLATIVE AND JUDICIAL SAFEGUARDS AIMED AT ENSURING IMPLEMENTATION OF THE CONVENTION

A. Legislative measures which give effect to the provisions of the Convention

26. In addition to the fact, referred to above, that the provisions of the Convention are directly enforceable, Libyan legislation contains safeguards which are designed to protect the basic freedoms and rights of the individual,

to prevent torture and other cruel, inhuman or degrading treatment or punishment, and to back up the provisions of the Convention. Special mention may be made of the following aspects of the legislation:

1. The principle of the legality of legislation (rules of justice and equity)

27. In accordance with this principle, any individual who believes that a legislative enactment is incompatible with his basic freedoms and rights may challenge its legality in terms of the rules of justice and equity laid down in article 2 of the Libyan Civil Code, under which those rules are regarded as basic criteria for an assessment of the legality of legislation. In keeping with this principle, the legality of any law that is not based on the rules of justice and equity may be challenged in the courts up to the very highest level, that is to say the Supreme Court, whose judgements and rulings on matters of principle are binding on the courts and the administration. This principle unquestionably reinforces the safeguards that the Convention against Torture seeks to have incorporated in the legislation of the States parties thereto.

2. The Great Green Document on Human Rights

28. The Great Green Document on Human Rights sets forth a number of principles designed to safeguard and promote respect for human rights and fundamental freedoms and to prevent treatment that is mentally or physically cruel or degrading. Any individual can challenge the legality of a legislative enactment that is inconsistent with the principles set forth in the Document, whose provisions prevail over those of other legislation, as will be shown below.

3. The Promotion of Freedom Act No. 20 of 1911

29. This Act is based essentially on international instruments and treaties concerning human rights and freedoms, as stated in its preamble: "Having taken note of existing international instruments and treaties concerning human rights and fundamental freedoms [...]". The Act sets forth basic principles contained in international instruments and treaties concerning human rights and fundamental freedoms, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as will be shown below in our review of the articles of the Convention.

4. Criminal legislation (the Penal Code and the Code of Criminal Procedure)

30. The provisions of the Convention against Torture are fully reflected in Libyan criminal legislation (the Penal Code and the Code of Criminal Procedure). Both Codes make strong provision for the measures against torture and other forms of cruel treatment or punishment that the Convention requires States parties to incorporate in their domestic legislation, as will be shown below.

B. Judicial safeguards

31. The judiciary has an extremely important role to play in protecting basic freedoms and rights. Accordingly, Libyan legislation provides for the independence of the judiciary, Moreover, individuals may enlist its services in safeguarding and reinforcing their rights and freedoms when they have been wronged or when their rights and freedoms have been violated. The Great Green Document on Human Rights guarantees the right to litigation and the independence of the judiciary. Thus, Principle 9 of the Document stipulates that: "The society of the Jamahiriya guarantees the right to litigation and the independence of the judiciary. Every accused person has the right to a just and impartial trial". Articles 30 and 31 of the Promotion of Freedom Act underscore these principles. Article 30 stipulates that: "Everyone has the right to petition a court, in accordance with the law. The court shall provide him with all the necessary safeguards, including legal counsel [...]". Article 31 stipulates that: "The judiciary is independent and is subject to no authority other than the law". The same principles are laid down in the Organization of the Judiciary Act.

32. The Supreme Court is the highest judicial body in the Libyan Arab Jamahiriya and the Libyan courts and public authorities are required, under the Act Establishing the Supreme Court, to apply its rulings and precepts concerning the safeguarding of human rights and freedoms and other matters. The People's Court is one of the chief custodians of human rights and freedoms. Article 1 of the People's Court Act No. 5 of 1988 specifies the purposes for which it was established: "There is established under the provisions of this Act a court, known as the People's Court, the purpose of which is to promote freedom, ensure legal redress for persons who have been wronged, prevent tyranny and oppression, strengthen the foundations of justice and security and consolidate the people's authority". In accordance with the provisions of the Act, the Court is competent to hear appeals against measures or decisions that are prejudicial to the freedom and other basic rights of citizens. It is also competent to hear appeals against measures, procedures or decisions that are prejudicial to personal freedoms.

III. COMPARATIVE REVIEW OF THE PROVISIONS OF THE ARTICLES OF THE CONVENTION AND OF LIBYAN LEGISLATION

Article 1

The corresponding provisions of Libyan legislation

33. Article 1 of the Convention contains a definition of torture and those responsible for inflicting torture. Libyan criminal legislation and the Libyan judiciary have established two basic principles in this regard: (a) prohibition of the torture of accused persons; (b) the inadmissibility of confessions or statements obtained from an accused person under duress and the nullity of all consequences thereof (Code of Criminal Procedure, Penal Code, Supreme Court rulings). Moreover, Principle 2 of the Great Green Document on Human Rights stipulates that: "Jamahiri society prohibits penalties that detract from human dignity and are detrimental to human well-being, such as hard labour and long-term imprisonment. Jamahiri society also prohibits the infliction of physical or mental harm on the person of a prisoner".

Article 17 of the Promotion of Freedom Act No. 20 of 1991 incorporates as follows the definition set forth in article 1 of the Convention against Torture: "It is prohibited to subject an accused person to any form of physical or mental torture or cruel, degrading or inhuman treatment". International instruments and treaties concerning human rights and fundamental freedoms, including the Convention against Torture, are the main legal source of the provisions of the Promotion of Freedom Act, as stated in the preamble thereto.

Article 2

The corresponding provisions of Libyan legislation

34. In addition to the provisions of the Great Green Document on Human Rights and the Promotion of Freedom Act prohibiting demeaning forms of punishment, physical or mental torture and cruel or degrading treatment, article 431 of the Penal Code stipulates that: "Any public official who, in the exercise of his duties, uses violence against a person in such a way as to dishonour him or cause him physical pain shall be punished by imprisonment and a fine not exceeding 150 dinars". This provision is in keeping with article 2, paragraph 1, of the Convention.

35. Article 435 of the Penal Code corresponds to article 2, paragraph 3, of the Convention. It stipulates that: "Any public official who personally tortures or orders the torture of accused persons is liable to a penalty of 3 to 10 years' imprisonment". Thus, no distinction is made by the lawmaker between the person who orders torture and the actual torturer. It follows that an order from a superior officer or a public authority may not be invoked as a justification for torture. This is how such matters are handled in the Libyan legal system, as we noted in Part I of the report.

36. With regard to the provision of article 2, paragraph 2, of the Convention, only two states of emergency or exceptional circumstances have been declared during the period from independence to the time of writing this report, the first in 1956 when Egypt was subjected to the tripartite aggression by Israel, the United Kingdom and France, and the second when Egypt was subjected to Israeli aggression on 5 June 1967. The Libyan authorities took certain steps to deal with the state of emergency, respecting the legally specified limits and guaranteeing the safety and freedom of individuals. No act of torture occurred and no restrictions were imposed on the freedom provided for in the Convention. The 1958 Emergency Act specified the limits within which the executive authorities were empowered to act, requiring them to abide by the law and to take account of the circumstances of each case.

Article 3

The corresponding provisions of Libyan legislation

37. Libyan legislation is based on the principle that persecuted persons and freedom fighters may not be extradited. Article 21 of the Promotion of Freedom Act stipulates that: "The Jamahiriya is a place of refuge for persecuted persons and freedom fighters and it is not permissible to extradite such asylum-seekers to any party". Moreover, article 439.1 of the Penal Code

stipulates that extradition is not permissible in cases where the persons concerned are charged with a political offence or with violating a political right of an individual, or where the crime was politically motivated. This is consistent with the provision of article 3 of the Convention and confirms that expulsion, extradition or refoulement are prohibited in cases relating to individual political rights or human rights violations.

38. It should be noted in this connection that the Jamahiriya has signed legal cooperation and exchange of offender agreements with a number of fraternal and friendly States in accordance with the above-mentioned legal provisions.

Article 4

Corresponding provisions of Libyan legislation

39. Libyan legislation prohibits acts of torture, regardless of whether the public official concerned acts personally or orders one of his subordinates to do so. Article 435 of the Penal Code stipulates that: "Any public official who personally tortures or orders the torture of accused persons is liable to a penalty of 3 to 10 years' imprisonment". Article 431 of the Penal Code stipulates that: "Any public official who, in the discharge of his duty, uses violence against any person in such a way as to undermine his dignity or cause him physical pain is liable to a penalty of imprisonment and a fine of 250 dinars".

40. This provision is reinforced by article 428, paragraphs 1 and 2, of the Penal Code, which stipulates that: "Anyone who kidnaps, detains, imprisons or otherwise deprives another person of his personal freedom by force, threat or deception is punishable by a term of imprisonment not exceeding five years. The term shall not exceed seven years if the act is committed by a public official who thereby exceeds his official authority". It is clear that the legislature's purpose in this article is to protect the freedom of ordinary people. Moreover, the penalty is more severe, as stipulated in the second paragraph, when the perpetrator of the act is a public official. It thus acts as a deterrent of abuse of official authority in the area of personal rights and freedoms.

41. Article 4 of the Convention is therefore fully covered by the provisions of Libyan legislation.

Article 5

The corresponding provisions of Libyan legislation

42. The Libyan Arab Jamahiriya has established its jurisdiction over the offences referred to in article 4 of the Convention and, as required under article 5 of the Convention, the provisions of Libyan legislation are applicable to any Libyan or foreign national who commits, in Libyan territory, any legally proscribed offences. Libyan territory is deemed to include Libyan aircraft and ships, wherever they may be, unless they are subject to foreign legal jurisdiction under the terms of international law.

43. Article 5 or the Penal Code stipulates that its provisions are applicable to anybody who commits an act outside the country that renders him a perpetrator of or an accomplice in a crime that was committed wholly or partly in the Jamahiriya. They are also applicable to anybody who commits an offence against the security of the State or an offence of fraud, forgery of money or slavery.

44. Article 6 of the Penal Code stipulates that: "Any Libyan national who, when outside the country, commits an act which constitutes a felony or a misdemeanour under this Code is liable to prosecution in accordance with its provisions if he returns to Libya, provided that the act constitutes a punishable offence under the law of the country in which it is committed".

45. It is clear from the foregoing that the offences referred to in article 4 of the Convention constitute punishable offences under the Penal Code and are subject to the jurisdiction of the Libyan courts, regardless of whether they are committed on Libyan territory or on Libyan ships or aircraft.

Article 6

Corresponding provisions of Libyan legislation

46. The provisions governing the arrest, detention and interrogation of individuals subject to the jurisdiction of the Libyan courts, be they citizens or foreign nationals, are laid down in the Code of Criminal Procedure. It is not permissible to arrest or detain any person except by order of the legally competent authority. The Code also specifies the time limits for detaining persons suspected of having committed one of the crimes referred to in article 4 of the Convention. A criminal investigation officer must hear their statements and refer them to the Department of Public Prosecutions within 48 hours if they are unable to exculpate themselves. The Department must question them within 24 hours and then either order their retention in custody and the institution of criminal proceedings against them or acquit and release them.

47. In accordance with article 4 of the Penal Code, arrest, detention and investigation procedures are applicable to persons suspected of having committed an offence regardless of whether they are Libyans or foreign nationals, in keeping with the right of the Libyan State to exercise its legal jurisdiction. In all cases, as already indicated, a provision of the Convention that is not covered by Libyan legislation may be applied directly by the Libyan judge inasmuch as the provisions of international treaties to which the Libyan Arab Jamahiriya is a party prevail over those of domestic legislation. In view of the fact that the Jamahiriya acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, that the people's congresses ratified it and that it was published in the Official Gazette, its provisions entered into force on that date and are binding on the Libyan courts.

Article 7

Corresponding provisions of Libyan legislation

48. The Department of Public Prosecutions takes immediate legal measures to question persons who are alleged to have committed the offences referred to in article 4 of the Convention and to hand them over to the courts on the basis of a complaint by the aggrieved party or anybody else with an interest in the case, or pursuant to its supervisory duties in respect of the work of criminal investigation officers and the running of prisons. All these measures are taken in accordance with the provisions of the Code of Criminal Procedure and in such a way as to guarantee fair treatment at all stages of the legal proceedings instituted against any person alleged to have committed a crime referred to in article 4 of the Convention. The accused person and the aggrieved party enjoy all the necessary safeguards, including the assistance of counsel appointed by the court for persons who are unable to pay lawyers' fees (article 30 of the Promotion of Freedom Act).

Article 8

Corresponding provisions of Libyan legislation

49. Libyan legislation has established legal rules governing the extradition of persons alleged to have committed acts punishable by law. Article 493 of the Code of Criminal Procedure makes the extradition of offenders subject to the following conditions:

(a) The act on which the extradition request is based must constitute an offence under Libyan law and under the law of the State requesting the extradition;

(b) The crime or penalty must not be statute-barred under the Libyan or foreign laws;

(c) The law of both States must permit criminal prosecution;

(d) The request must not relate to a Libyan citizen;

(e) The offence must not be political or politically motivated.

50. Article 494 of the Code of Criminal Procedure stipulates that: "Extradition or permission to extradite shall be subject to the condition that the person to be extradited was not being prosecuted in the Libyan courts for another offence prior to submission of the request for extradition or was not serving a criminal sentence pursuant to a judgement other than that in respect of which the request for extradition or permission to extradite was submitted".

51. Article 495 of the Code of Criminal Procedure stipulates that a person accused or convicted abroad may be extradited only after a decision to this effect has been obtained from the criminal court within whose jurisdiction the person whose extradition is requested resides.

52. In addition, articles 8 and 9 of the Penal Code regulate the matter of extradition, giving priority to the application of international treaties and practice. Thus, the provisions of Libyan legislation are not inconsistent with those of the Convention against Torture, whose provisions may be considered as the basis for extradition in the case mentioned in article 8, paragraph 2, thereof.

Article 9

The corresponding provisions of Libyan legislation

53. The Jamahiriya undertakes to do so in cases other than those in which Libyan legislation does not allow extradition, i.e. those referred to in article 9 of the Penal Code and article 20 of the Promotion of Freedom Act, which prohibit extradition in the cases specified in article 3 of the Convention against Torture. As already indicated, the Jamahiriya has signed a number of agreements with fraternal and friendly States concerning mutual legal assistance and is bound by their provisions.

Article 10

54. The Jamahiriya has made considerable progress in incorporating human rights and the prohibition against torture in educational curricula and the media so that all public officials who are involved in custody, interrogation and other matters are aware of how they must treat individuals in the performance of their duties. The same applies to the promotion of awareness and the development of a culture opposed to torture and supportive of the individual's right to freedom and dignity, as demonstrated below.

(a) Education

55. The subject of human rights is first taught at the secondary education level and in intermediate colleges, where the Great Green Document on Human Rights and all matters relating to human rights and freedoms are studied.

56. The subject of human rights is a key component of the curricula of the eight law faculties in Libyan universities. The syllabus for the course is constituted as follows:

(a) The historical origins of human rights, comprising:

Human rights in primitive societies;

Human rights in the societies of ancient civilizations.

(b) Human rights in the Middle Ages, comprising:

Human rights in the countries of the Roman and Persian Empires;

Human rights and fundamental freedoms in the Islamic Shari'a.

(c) Human rights in modern times, comprising:

Global and regional human rights declarations and instruments:

The Universal Declaration of Human Rights;

International and regional human rights instruments (including the Convention against Torture);

The Great Green Document on Human Rights in the Age of the Masses.

(d) National and international human rights safeguards, comprising:

National safeguards;

International safeguards.

57. The law faculties organize public lectures and seminars on human rights in cooperation with local and international public bodies with a view to spreading human rights ideas and culture among the general public. Needless to say, the law faculties produce all graduates who are subsequently employed as judges, public prosecutors, lawyers and assessors or in other areas with a direct bearing on the implementation and monitoring of compliance with the provisions of this Convention.

58. The Secretary of the General People's Committee for Public Security, acting in accordance with the provisions of this article of the Convention to promote familiarity with its provisions and those of Libyan legislation directed against all forms of torture and to safeguard the individual freedoms and human rights set forth in international instruments, the Great Green Document on Human Rights and the Promotion of Freedom Act, promulgated a decision in 1997 concerning the teaching of human rights as a basic subject in police academies, colleges and institutes in the Jamahiriya. The subject covers all global and regional human rights declarations and instruments, including the Convention against Torture. Hence, all persons employed in the police and other security forces will be fully acquainted with the behaviour required of them in the performance of their duties in order to safeguard the rights, freedoms, security and safety of individuals against any physical or mental ill-treatment while in the hands of the law.

59. Human rights is also taught as a basic subject in the medical faculties of medical universities. The course comprises the history of human rights, global and regional human rights declarations and instruments, and the Great Green Document on Human Rights.

(b) The media

60. The Libyan media ensure continuous coverage of human rights culture and all local and international developments in human rights.

61. In addition, the Libyan Arab Human Rights Commission (a non-governmental organization established in 1988) has actively pursued its aims of spreading concepts and principles relating to human rights and fundamental freedoms, consolidating belief in and respect for such rights and freedoms, and using all available legal means to defend and champion them. For example, the Commission organized an international seminar in June 1998 on the occasion of the tenth anniversary of the proclamation of the Great Green Document on Human Rights, which was attended by persons involved in human rights activities and human rights defenders from different continents. The seminar focused on protection of human rights and prevention of torture. The participants presented relevant papers and studies and coverage of the event by the Libyan audio-visual and print media included live transmission of the proceedings. The Commission also organizes regular seminars and lectures in cooperation with lawyers' and doctors associations and other bodies with a view to publicizing and consolidating belief in human rights principles.

62. In spring 1998, the Jamahiriya held a world human rights festival that was attended by Arab and international political figures and members of parliament. The papers discussed at the festival concerned human rights, prevention of torture, prevention of all forms of racial discrimination and other relevant subjects. Various branches of the media covered the events, publicizing the discussions and decisions.

63. The General People's Committee for Justice, in cooperation with the General People's Committee for Public Security, organizes regular lectures for prison personnel, including police officers, social scientists, doctors, forensic scientists, and other persons involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. The lectures are delivered by legal experts and specialists in human rights matters.

64. It is clear from the foregoing that article 10 of the Convention is fully applied in the Libyan Arab Jamahiriya.

Article 11

Corresponding provisions of Libyan legislation

65. The Code of Criminal Procedure lays down the rules governing questioning and methods of interrogation. The Department of Public Prosecutions must question the suspect within 24 hours of his referral thereto by the criminal investigation officer. Within that period, it must either retain the suspect in custody for investigation or release him in the light of its assessment of the charges against him (article 26 of the Code of Criminal Procedure). Questioning is also undertaken by the examining magistrate who is required by law to question persons arrested on suspicion of having committed a crime immediately. If this is not possible, he orders their committal until such time as they are questioned on condition that the period of committal does not exceed 24 hours. If this period is exceeded, the prison warden must hand them over to the Department of Public Prosecutions, which must request the examining magistrate to question them immediately, failing which it must order their release.

66. With regard to arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture, article 17 of the Promotion of Freedom Act stipulates that: "It is prohibited to subject an accused person to any form of physical or mental torture or cruel, degrading or inhuman treatment". Article 435 of the Penal Code stipulates that: "Any public official who personally tortures or orders the torture of accused persons is liable to a penalty of 3 to 10 years' imprisonment". It follows from these two articles that persons whose freedom has been restricted may not be subjected to treatment that is either physically or mentally cruel or degrading during custody, following conviction or during enforcement of the sentence.

67. Article 31 of the Code of Criminal Procedure specifies the place in which accused and convicted persons are to be detained: "No one may be detained save in the places of detention designated for the purpose". The idea underlying this provision is that detention should be confined to specially designated and well-known places that are subject to supervision and inspection in order to determine whether prisoners' conditions of detention are consistent with the law and whether they have complaints about their treatment in prison.

68. Members of the Department of Public Prosecutions, supervisory magistrates and the presidents and vice-presidents of the courts of first instance and appeal courts are responsible for prison oversight, inspection and supervision. Under article 32 of the Code of Criminal Procedure, they are authorized to visit public prisons in their areas of jurisdiction in order to ensure that no one is imprisoned unlawfully, to inspect prison registers, arrest warrants and committal orders and make copies thereof, and to contact any prisoner and hear any complaints he wishes to make.

69. Article 33 of the Code of Criminal Procedure stipulates that: "Every prisoner has the right to submit a written or verbal complaint, at any time, to the prison warden and to request him to transmit it to the Department of Public Prosecutions or the competent magistrate. The warden is legally bound to accept and promptly transmit such complaints after entering them in the register maintained for that purpose. Anyone who comes to know that a person is imprisoned unlawfully or in a place other than a legally designated prison must notify a member of the Department of Public Prosecutions or the competent magistrate, who, having been thus notified, must proceed forthwith to the place in which the person is being held, conduct an investigation, release the illegally confined person and draw up a report concerning the matter".

70. Furthermore, to ensure that prisoners are treated properly, the Prisons Act No. 47 of 1975 differentiates between prisoners in terms of their age, the penalty imposed and the nature of the offence. The following categories of detainees are accommodated in special open or semi-open prisons:

(a) Persons remanded in custody;

(b) Persons convicted of traffic or other minor offences;

(c) Persons over 60 years of age who have been sentenced to a term of imprisonment;

(d) Persons sentenced to physical constraint under the terms of financial judgements.

71. With regard to treatment and living conditions, the inmates of each central or local prison are divided into two categories which are segregated from each other. The Prisons Act does not permit the accommodation of detainees over 18 but under 21 years of age in the central prisons together with persons sentenced to long terms of imprisonment (article 19 of the Prisons Act).

72. Under article 20 of the Prisons Act, persons remanded in custody are subject to special regulations. They are segregated from other prison inmates and treated differently. The Act also provides for special treatment of juveniles, who are not held in remand centres but accommodated at welfare institutions while they are under investigation or awaiting judgement. Article 316 of the Code of Criminal Procedure makes provision for a special juvenile court whose judgements constitute preventive measures under which the juvenile is placed in a welfare institution or delivered into the custody of a trustworthy person during the investigation and before conviction (article 318 of the Code). Before sentences can be enforced, they must be reviewed by the supervisory magistrate.

73. Article 81 of the Penal Code stipulates that: "Convicted young persons shall serve their sentences at an institution for juveniles bearing criminal responsibility for their acts. In the said institution, they shall be subjected to a special educative and reformative system designed to deter them from further acts of delinquency and prepare them to become upstanding members of society".

74. The Libyan legislature, motivated by the aim of ensuring proper treatment and rehabilitation for prisoners and of turning prisons into centres of reform and correction rather than places of torture and cruel treatment, stipulated in article 18 of the Promotion of Freedom Act that: "The purpose of penalties is to reform, correct, rehabilitate, educate, discipline and admonish". Principle 2 of the Great Green Document on Human Rights defined the purpose of penalties as "social reform and protection of human values and of the interests of society. Jamahiri society prohibits penalties that detract from human dignity and are detrimental to human well-being, such as hard labour and long-term imprisonment. Jamahiri society also prohibits the infliction of physical or mental harm on the person of a prisoner and condemns the practice of using prisoners as bargaining chips or subjecting them to experimentation".

75. Article 41 of the Penal Code defines the principles to be used as guidelines when enforcing penalties. The method of enforcement of the penalty should aim to reform and educate the offender in such a way as to achieve the moral and social objectives of the penalty. When enforcing penalties involving a restriction of liberty, due regard should be shown for humanitarian principles and the principles of work and correction.

76. Article 1 of the Prisons Act defines the function of penal institutions as follows: "Prisons are places of reform and education designed to correct the behaviour of persons sentenced to criminal penalties involving deprivation of liberty and to rehabilitate them so that they can become upstanding members of society".

77. The above legislative texts meet the requirements of article 11 of the Convention in regard to arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment.

Article 12

78. The Jamahiriya, as a party to the Convention against Torture, ensures that its competent authorities proceed to a prompt and impartial investigation where there are grounds to believe that an act of torture has been committed within the area of its jurisdiction. Such action is based on the above-mentioned provisions of Libyan legislation and on this article of the Convention against Torture.

Article 13

The corresponding provisions of Libyan legislation

79. Under Libyan legislation, every individual has the right to complain to the judicial authorities of any ill-treatment he has suffered and the requisite steps are taken to protect him against all ill-treatment or intimidation as a consequence of his complaint. Principle 9 of the Great Green Document on Human Rights stipulates that: "Jamahiri society guarantees the right to litigation and the independence of the judiciary. Every accused person has the right to a just and impartial trial". Principle 26 of the Document stipulates that: "Every person has the right to resort to the courts in order to seek legal remedy for any violation of his rights and freedoms as set forth herein". In effect, the rights and freedoms set forth in the Document comprise most of the basic principles contained in international human rights treaties and instruments, including the Convention against Torture. Moreover, the Great Green Document on Human Rights takes precedence over all other domestic legislation since it has been decided as a matter of principle that any legislative enactment whose provisions are inconsistent with the principles set forth therein must be revoked or amended.

80. Article 30 of the Promotion of Freedom Act stipulates that: "Everyone has the right to petition a court, in accordance with the law. The court shall provide him with all the necessary safeguards, including legal counsel, and the applicant is entitled to avail himself of the services of a lawyer of his own choosing". The provisions of this article covers two matters: the right of anyone who has been wronged to file a complaint; provision of the safeguards needed to protect the complainant against all ill-treatment or intimidation as a consequence of his complaint. In addition to these safeguards, the law obliges the court to provide him with legal counsel. Article 32 of the Promotion of Freedom Act stipulates that no public body has the right to exceed its terms of authority and intervene in matters with which it is not concerned, nor is it permissible for any body to intervene in criminal investigation proceedings unless it is legally empowered to do so.

This article prohibits abuse of authority by the administration and intervention in cases where exceptional circumstances are invoked as a justification for the infringement of human rights.

81. The individual may also have recourse to the People's Court which is competent, pursuant to its Act of Establishment, to hear appeals against procedures, measures or decisions that are prejudicial to the personal freedoms of the individual. It is also competent to hear appeals against procedures, measures or decisions that are prejudicial to the other basic human rights of the individual. The safeguards for the protection of complainants required by article 13 of the Convention are reinforced by article 30 of the Code of Criminal Procedure, which stipulates that no one may be arrested or detained except by order of the legally competent authorities.

Article 14

The corresponding provisions of Libyan legislation

82. Article 166 of the Civil Code stipulates that: "Any fault that causes damage to another person renders its perpetrator liable to payment of compensation in respect thereof". And article 167 of the Civil Code stipulates that: "A person is liable for his illegal acts if they are committed while he is capable of distinguishing right from wrong". The application of these two articles is subject to the general rules governing liability which are based on well-known legal foundations, i.e. they are applicable to the causer of damage and to the perpetrator of an unlawful act. Moreover, their scope is unrestricted so that they are applicable without distinction to a public or private body, an ordinary individual or a public official.

83. The victim of any act of torture may, in accordance with the Convention, claim compensation either by bringing an independent action before the civil courts or by resorting to the criminal courts. The principle of an enforceable right to compensation is thus guaranteed in accordance with article 14 of the Convention.

84. Article 7 of the Code of Criminal Procedure, under which all victims of torture are guaranteed the right to compensation, stipulates that: "Anyone who claims to have suffered damage as a result of a crime is entitled to lodge a complaint as a civil claimant before the Department of Public Prosecutions or a criminal investigation officer. The Department of Public Prosecutions shall refer any such complaint to the examining magistrate". Article 60 of the Code of Criminal Procedure contains the following provision: "Any person who has suffered damage may constitute himself as a civil claimant during the examination of his case. The examining magistrate shall take the final decision regarding his recognition in that capacity during the examination". Articles 173 and 193 of the Code of Criminal Procedure reinforce these provisions. Moreover, any person who has suffered damage may exercise the same right when he appears before the court responsible for considering his case (article 224 of the Code of Criminal Procedure).

85. Furthermore, individuals may directly invoke the provisions of article 14 of the Convention before the courts with a view to obtaining fair

and adequate compensation for any act of torture to which they have been subjected, in accordance with the procedures indicated above. This right may also be exercised by the heirs of a deceased person.

86. With regard to rehabilitation, under Libyan legislation every citizen is guaranteed access to rehabilitation facilities, including psychotherapy and physical treatment, absolutely free of charge, regardless of whether their condition is due to wrongdoing, a natural occurrence or even self-inflicted wrongs such as drug addiction. This provision stems from the principle of free health care, which society guarantees to all individuals equally and hence, in particular, to victims of torture or cruel or degrading punishment.

Article 15

87. Pursuant to Libyan legislation which prohibits torture and all forms of cruel and degrading treatment and punishment, it is the practice in the Department of Public Prosecutions to investigate any complaint by an accused person that he has been subjected to any form of coercion with a view to extracting a confession or any other statement during the preliminary examination by the criminal investigation officer. The Department of Public Prosecutions must investigate the matter by referring the accused person to a specialist in forensic medicine who examines the accused person, ascertains whether he was subjected to physical coercion and prepares a report thereon for submission to the Department of Public Prosecutions.

88. It is the established practice in Libyan criminal courts to declare inadmissible any statements or confessions made by an accused person as a result of coercion or torture. The judge hearing the case must reject all confessions, evidence or statements, regardless of their probative value, if it comes to his knowledge that they were obtained through any form of coercion.

89. The Supreme Court has established this principle in a number of judgements, in keeping with article 15 of the Convention which has been binding on Libyan courts since its ratification. The following are examples of Supreme Court judgements in which the principle was applied:

(a) The following Supreme Court ruling on Criminal Appeal SC/26/534 confirms that a confession is inadmissible if it was obtained through coercion: "No evidence is admissible if obtained through coercion, regardless of its value".

(b) According to another judgement: "No admission or confession is admissible if obtained through coercion" (Criminal Appeal SC/24/89).

(c) This principle is borne out by the following judgement: "The court hearing the case must examine, verify and respond to the defence put forward by the accused person in an acceptable rational and logical manner. If it fails to respond in such a way as to refute it, or if its response is flawed and statements extracted under duress were used as evidence for a conviction, the resulting judgement is unsound and must be set aside" (Criminal Appeal SC/33/165).

(d) In another judgement, the Appeal Court stated that: "The judge hearing the case must examine and verify the arguments put forward by the accused to the effect that the confession attributed to him was obtained through coercion" (Criminal Appeal SC/24/89).

Article 16

90. Our comparative review of the provisions of Libyan legislation and those of the Convention, particularly in respect of articles 11, 12 and 13, may have covered the provisions of article 16. However, the following legal provisions are also of relevance to that article:

91. Article 6 of the Promotion of Freedom Act stipulates that: "Everyone has a right to security of person and it is prohibited to conduct scientific experiments on the body of any living person without his consent". In addition, article 17 of the same Act contains a general provision relating to all forms of cruel treatment or torture, which we have already referred to in this report. Libyan legislation also deals with other forms of degrading treatment which do not amount to torture. The Penal Code defines enslavement and bondage as offences against the freedom of the individual and the exploitation of prostitutes, international trafficking in women and complicity in such trafficking as offences against freedom, honour and morality. All of these offences are degrading and detract from human dignity.

92. Should it come to light that any aspect of article 16 is not covered by Libyan legislation, the shortcoming can be remedied by applying the provisions of the Convention since they are binding on the Libyan courts.

93. In conclusion, we hope that we have provided the Committee against Torture with a clear overview of the measures taken by the Jamahiriya in fulfilment of its obligations under the Convention against Torture and other international instruments relating to human rights and fundamental freedoms.

94. It should be noted in this context that, while individuals fully enjoy their rights and freedoms within Libya and while all the safeguards needed to protect such rights and freedoms against violation are in place, the Libyan people have been collectively subjected to callous sanctions since 1992 as a result of the blockade imposed by a number of developed countries pursuant to Security Council resolutions. These sanctions have affected the Libyan people's access to means of sustenance and their right to development, health care and medical treatment as a result of the coercive economic and political measures that the countries concerned have taken against the people as a whole without any logical or legal justification. Moreover, the sanctions have deprived Libyan citizens of the right to travel and even to perform their religious duties, and has endangered the lives of thousands of innocent people, especially vulnerable members of society such as women, children, the elderly and the disabled. This constitutes a grave violation of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and other international instruments relating to human rights and fundamental freedoms which the international community is endeavouring to promote and to extend to all individuals without exception.

95. Reaffirming its commitment to the promotion, respect and protection of all human rights and fundamental freedoms, the Libyan Arab Jamahiriya expresses the hope that the principle of dialogue among peoples and peoples' right to make their own political, economic, cultural and social choices will prevail over the use or threatened use of force, all forms of coercion and the use of human rights as a pretext for interfering in the internal affairs of States.